Amsterdam Court of Appeal: interest on 'debt push down' in acquisition structure not deductible under Section 10a CITA 1969

On 20 August 2026, the Amsterdam Court of Appeal ruled on the question whether interest expenses on an intra-group debt push down after an acquisition are tax deductible. In contrast to the District Court's earlier judgment, the Court of Appeal ruled that the interest in this case is not deductible due to the interest deduction limitation in Section 10a CITA 1969. The Court of Appeal held that both the transaction and the financing in this debt push-down structure were mainly tax-driven.

Facts of the case: acquisition and debt push down

This case concerned the acquisition in 2017 of an international retail chain by an investor for approximately GBP 1.5 billion. The acquisition was financed with approximately GBP 800 million of external bank debt. This acquisition took place mainly through an acquisition structure set up in the United Kingdom, including a financing entity ('F Ltd') that took on the bank debt, and an acquisition holding company ('H Ltd') that took over the shares in the retail group's top holding company from the seller.

The retail chain included a Dutch participation, and the intention was that part of the bank debt (€ 140 million) would essentially be borne by the Dutch company following the acquisition through a restructuring (a 'debt push down'). In short, the following restructuring steps were taken:

- Prior to the acquisition, the financing entity, F Ltd, established a Dutch holding company, H BV. This holding company was financed by F Ltd with approximately € 233 million, consisting of € 93 million of capital, and a loan of € 140 million. The intention was that F Ltd would essentially on-lend part of its external bank debt to H BV by way of this intra-group loan.
- This entire amount of € 233 million was provided by H BV in the form of a loan to H Ltd, which would take over the shares in the Dutch operating company of the retail chain from the seller.
- After the shares in the group were taken over from the third party, the shares in the Dutch participation within the group were transferred to H BV. The purchase price for this Dutch participation was € 233 million, and H BV settled this purchase price by transferring its receivable on H Ltd.

As a result of these steps, H BV had acquired the shares in the Dutch participation, which were essentially financed for € 140 million by the group loan. By entering into a fiscal unity with the Dutch participation, H BV would be able to offset the interest expense on the group loan of € 140 million with the results of the Dutch retail company.

Tax background and previous course of the proceedings

In this case, the inspector argued that the interest on the group loan was not deductible due to, among other things, the interest deduction limitation of Section 10a CITA 1969. This rule provides that interest on a loan from a related entity is not deductible (inter alia) if the loan has been used to acquire shares in an entity that qualifies as a related party following that acquisition. However, rebuttal rules are available under which the interest deduction limitation does not apply if the taxpayer can demonstrate that either

(i) both the financing and the transaction are business-motivated, or (ii) sufficient compensatory tax is levied on the interest income of the creditor.

Typically, in the case of an external acquisition, the transaction (the acquisition of shares from a third party) may be assumed to be business-motivated. In addition, external financing would, in principle, not fall within the scope of the interest deduction limitation. If, on the other hand, an internal group loan is actually derived from external bank financing, then the loan still falls within the scope of the interest deduction limitation. However, this financing can be argued to be business-motivated if, for example, it is in fact linked to the external financing and the internal and external loans have the same terms and conditions. This is described as 'parallelism' between the internal and external debt. According to the Supreme Court, the term, repayment schedule, interest payment, amount of the loan, and the time at which the loan was taken out must, in any event, be considered together.

Although the acquisition of the retail chain was an external acquisition from the investor's point of view and external debt had been attracted for it, H BV was in fact only involved in intra-group transactions. The shares in the Dutch participation were not taken from a third party but from a group company, and the loan was granted by F Ltd, a related entity. The question arose whether this method of structuring was permissible (in terms of business motivated transactions and financing) in the light of Section 10a CITA 1969.

In August last year, the District Court of Noord-Holland ruled that a business motive was the basis for the debt push down, and that the group loan was almost entirely parallel to the external financing. In addition, it was also within the taxpayer's freedom of choice to set up the financing and structure of the external acquisition in this way. The District Court therefore ruled that these interest expenses in respect of the loan after the debt push down were not limited in deduction by Section 10a CITA 1969.

Considerations of the Court of Appeal: No business motivated transaction, and no parallelism

The Amsterdam Court of Appeal reached a different conclusion from the District Court. The Court of Appeal held that the rebuttal rule had not been met, in the first place because it held that the taxpayer had provided insufficient evidence of business reasons for the transaction (the internal transfer of shares). For example, it was argued that the debt push down would allow the external bank debt to be serviced more efficiently through the internal loan. However, the Court of Appeal did not accept this argument. It noted that the internal interest would have to be funded by dividends from the Dutch participation and that this debt servicing had not been mentioned as a consideration for in structuring the restructuring. Based on the evidence presented, consisting mainly of a Tax Structure paper, the Court of Appeal concluded that the debt push down was mainly motivated by tax considerations. The Court of Appeal identified two tax advantages: first, an interest deduction at the higher Dutch corporate income tax rate, while the corresponding income was taxed at a lower rate in the UK; and secondly, a tax advantage in the UK because the debt push down allowed an additional interest deduction on a loan from a Jersey group company without the interest income being taxed there.

In addition, in respect of the business reasons for the financing, the Court of Appeal held that the taxpayer had not demonstrated that the external lenders should be considered as the de facto financiers for the internal loan. The external financing documentation allegedly showed that the loan was mainly intended to finance the acquisition of the retail chain and did not demonstrate an intention to on-lend part of the loan internally. Moreover, the proceeds of the financing relating to the acquisition price were paid directly to the seller and, according to the Court of Appeal, were therefore 'not actually used' for the internal loan.

In addition, despite the fact that the terms and conditions of the internal and external loans were appropriately reflected, this does lead to the conclusion for the Court of Appeal that there is parallelism with the external loan. According to the Court of Appeal, it is relevant in this regard that in practice the conditions were applied differently:

- Repayment schedule: Part of the internal loan had been repaid in a later year while the external loan had not been repaid.
- Term: At some point, despite an agreed term of seven years, the debt was reported as a short-term receivable in the balance sheet of the annual accounts and the corporate income tax return. The fact that this was adjusted only after the District Court proceedings had been established would indicate a 'major error' and gave rise to doubts about the term of the loan.
- Interest payment: although the interest was actually paid on the external debt, it had not been demonstrated that interest was actually paid on the internal loan. The annual accounts would also show a different interest rate for the loan than the loan agreement.

The Court of Appeal subsequently found that the tax inspector had successfully demonstrated that the rebuttal rule based on the business motivation for the transaction and the financing had not been met. Accordingly, the second rebuttal rule concerning a compensatory levy on the interest income in the UK was not assessed further, as that rule could no longer result in an interest deduction once the tax inspector had demonstrated that the business-motivation test was not met.

Procedural law aspect: the failure to place a 'tick' in the tax return

Another relevant point in these proceedings concerned the formal-law aspects of the interest deduction limitation. The tax return included the following question: 'Are you making use of the rebuttal rule of Section 10a CITA in this financial year?' H BV had not answered this question in the affirmative (that is, it had not ticked the box). In the view of both the District Court and the Court of Appeal, H BV had wrongly failed to tick the relevant box in the tax return. According to the Trust Question judgment of the Dutch Supreme Court, this means, in principle, that the legally required tax return ('*vereiste aangifte*') was not filed, with the result that the burden of proof is reversed and increased for the taxpayer. H BV would therefore have to demonstrate convincingly in these proceedings that the inspector had incorrectly applied the interest deduction limitation in Section 10a CITA 1969.

However, the District Court previously came to the conclusion that the sanction of reversal and increase of the burden of proof in this case would be disproportionate. In this respect, the District Court considered it relevant that the sanction is generally intended to compensate the inspector for a lack of information that arises if the taxpayer has not provided all – correct – information when filing the tax return. In the present case, however, the inspector was aware of H BV's 10a position, so that there was no information deficit on the part of the inspector. The District Court therefore considered the failure to place the '10a tick' to be of insufficient weight to justify the sanction.

The Court of Appeal did apply the sanction. In its view, despite the inspector's knowledge of the Section 10a position, H BV remained legally obliged to file the required return. In view of the amount of the claimed interest deduction, the Court of Appeal considered the sanction justified. The Court of Appeal also appeared to confirm that the presence or absence of an arguable filing position (*pleitbaar standpunt*) is relevant for determining whether the sanction is justified. However, it found that no such filing position existed here because the connection between the intra-group loan and the share acquisition was 'evident'. Since the Court of Appeal had already ruled that the interest was not deductible before addressing the increased burden of proof, this issue had no consequences for the main point in dispute. Finally, the Court of Appeal addressed an interest expense item of € 82,911 that, according to the taxpayer, had arisen before the acquisition. However, taking into account the increased burden of proof, the Court of Appeal found that the taxpayer had not convincingly demonstrated this. Accordingly, the interest deduction was also disallowed for this item.

Comments by KPMG Meijburg & Co

This judgment marks the next chapter in the case law on interest deductions in acquisition structures. In recent cases, however, the question has revolved around whether fraus legis (abuse of law) applied, whereas the present case was decided entirely on the basis of the interest deduction limitation of Section 10a CITA 1969. The Court of Appeal approached the case differently from the District Court and found that, with regard to both the legal transaction at issue and the method of financing, the taxpayer had not demonstrated that they were business-motivated. The judgment also shows that the Court of Appeal applies a strict test when assessing whether an internal debt is sufficiently linked to external financing. It will be interesting to see how the Supreme Court views this case if a further appeal is lodged, particularly in light of the differing judgments of the District Court and the Court of Appeal.

If you would like to know more, please feel free to contact us or your usual Meijburg advisor.

KPMG Meijburg & Co
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